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Legal Summaries

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Legal Summaries*

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UNITED STATES SUPREME COURT

Howard Delivery Serv. v. Zurich Am. Ins. Co., 126 S. Ct. 2105 (2006).

LAW: Unpaid workers' compensation insurance premiums fall outside the priority allowed under section 507(a)(5) of the Bankruptcy Code for contributions to employee benefit plans arising from services rendered.

FACTS: The Bankruptcy Code accords priorities to unsecured creditors' claims for unpaid wages, salaries, commissions and for unpaid contributions to employee benefit plans. Howard Delivery Service, Inc. ("Howard") was required to provide workers' compensation coverage to its employees. Howard contracted with respondent Zurich American Insurance Company ("Zurich") to provide this insurance for Howard's companies in ten different states. After Howard filed a bankruptcy petition, Zurich filed an unsecured creditor's claim for $400,000 in premiums, claiming that they qualified as contributions to an employee benefit plan. They further claimed these contributions were entitled to priority under section 507(a)(5). The bankruptcy court denied priority status to the claim, and the district court affirmed. The Court of Appeals for the Fourth Circuit panel reversed.

ANALYSIS: Insurance carriers' claims for unpaid workers' compensation premiums owed by an employer fall outside the scope of section 507(a)(5). The premiums paid for workers' compensation insurance are more closely aligned with premiums paid for automotive, fire or theft insurance, rather than contributions made to secure employee fringe benefits under pension plans and disability insurance which are covered under section 507(a)(5).

Congress enacted section 507(a)(5) granting priority to plan providers to recover unpaid premiums after employees' claims for wages have been paid. Employees can recover up to $10,000 for benefit plan contributions and wage claims.

The Court focused on the difference between workers' compensation regimes which protects the insured enterprise, while employer sponsored fringe benefit plans only protect the employee or his survivor. Additionally, workers' compensation plans provide a

trade off where employees are assured limited fixed payments for job related accidents, and employers are shielded from large judgments and expensive tort litigation costs. Thus, section 507(a)(5) priority provisions must be narrowly construed to provide equal and fair distribution among creditors.

HOLDING: The appellate court's judgment is reversed and remanded.

IMPACT: Allowing section 507(a)(5)'s preference provision to apply to workers' compensation carriers could result in a dramatic decrease in the amount available to cover unpaid contributions to plans which truly qualify as wage claims. Thus, this decision will guarantee that recovery amounts under true wage claims will not be diluted.

Empire HealthChoice Assurance, Inc. v. McVeigh, 126 S. Ct. 2121 (2006).

LAW: Reimbursement of an out-of-state court tort suit settlement stemming from injuries sustained by a federal employee are to be resolved in state court.

FACTS: The Office of Personnel Management ("OPM") negotiates and regulates health benefit plans for federal employees under the Federal Employees Health Benefits Act of 1959 ("FEHBA"). FEHBA contains a preemption provision stating that federal district courts have original jurisdiction over health insurance claims against the United States. Additionally, FEHBA obligates the insurer to make reasonable efforts to recover amounts paid for medical care. It also alerts enrollees that medical expenses recovered from anyone other than the insured were to be used to reimburse the plan for benefits paid.

OPM contracted with Blue Cross to provide a nationwide plan administered by local companies such as Empire HealthChoice Assurance, Inc. ("Empire"). This case stems from a state court tort action brought by McVeigh, a former plan enrollee, against third parties for his injuries. Empire sought reimbursement for the medical care costs it paid to McVeigh. Empire argued that its contract-derived reimbursement claim involved unique federal interests

because (1) reimbursement directly affects the U.S. Treasury, and (2) Congress expressed interest in maintaining uniformity among the States regarding federal health plan benefits.

The district court rejected Empire's arguments and granted McVeigh's motion to dismiss for lack of subject-matter jurisdiction. The Second Circuit affirmed.

ANALYSIS: In this case, there was no express federal right of action allowing insurers to sue health care beneficiaries in federal court for reimbursement under FEHBA contracts. Reimbursement rights stemming from proceeds of state court personal injury actions are usually resolved in state courts.

Additionally, this action did not fall under the section 1331 exception, where federal law is a necessary element of the claim for relief. Here, there was no significant conflict between an identifiable federal interest and state law; thus, there was no reason to lodge this case in federal court.

HOLDING: The court of appeals' judgment is affirmed.

IMPACT: The Government has a substantial and important interest in attracting qualified federal workers and providing for their health. However, these interests alone are not sufficient to transform an insurer's contract-derived claim for reimbursement into a costly federal case.

Gonzales v. O Centrol Espirita Beneficente Uniao Do Vegetal, 126 S. Ct. 1211 (2006).

LAW: The Government must demonstrate a compelling interest justifying the substantial burden on a church in restricting their exercise of religion.

FACTS: After United States Customs' inspectors seized a shipment of hoasca, a hallucinogen, to the church, the church filed this suit and moved for a preliminary injunction. The church argued that applying the Controlled Substance Act ("CSA") to their sacramental use of hoasca violated the Religious Freedom Restoration Act of 1993 ("RFRA"). The government argued that applying the CSA was the least restrictive means of advancing such compelling governmental

interests as: (1) protecting church members' health and safety; (2) preventing the diversion of hoasca from the church to recreational users; and, (3) complying with the United Nations Convention on Psychotropic Substances. The district court granted relief. The Tenth Circuit affirmed, holding that the Government failed to demonstrate sufficient governmental interest to outweigh the burden on the church.

ANALYSIS: The arguments of potential harm of the hallucinogenic substance and diversion are insufficient grounds to justify enforcement of the Controlled Substances Act on the sacramental use of hoasca. Under the RFRA and its strict scrutiny test, the Government must meet the burden of demonstrating a compelling interest which applies to the individual whose sincere exercise of religion is being restricted.

The fact that Congress classified the hallucinogen under Schedule I of the CSA does not relieve the Government of its duty to justify restrictions on religious acts which may infringe on the RFRA. Here, the Government failed to provide sufficient grounds to justify the restriction on religious use of hoasca.

HOLDING: The Tenth Circuit's judgment is affirmed.

IMPACT: Although the sacramental use of a substance may be potentially harmful and dangerous, the Government still bears the heavy burden of striking a balance between religious liberty and advancing compelling Government interests.

CALIFORNIA STATE COURT

Excelsior Coll. v. Bd. of Registered Nursing, 39 Cal. Rptr. 3d 618 (Cal. Ct. App. 2006).

LAW: The California Board of Registered Nursing had no duty to the college to continue recognizing its nursing program's coursework because the Board properly exercised its statutory discretion.

FACTS: Excelsior College established a New York-based nursing program which enabled students to earn college degrees and to apply for licensure in California. For over twenty years, the California

Board of Registered Nursing accepted Excelsior's nursing program as meeting the minimum standards of the Board for licensure under California Business and Professions Code section 2736(a)(2).

However, after receiving complaints from the Public Health Nursing Directors that Excelsior's program lacked sufficient supervised clinical practice, the Board decided that it had no duty to evaluate out-of-state programs before a nursing program graduate applies for licensure. Excelsior challenged the Board's refusal to recognize their program. The trial court sustained the Board's demurrer to Excelsior's petition for writs of mandate and declaratory and injunctive relief.

ANALYSIS: Under California Business and Professions Code section 2736(a)(2), the Board owed no duty to the college to continue to recognize or accept the coursework of the out-of-state nursing program. However, the Board has discretion to prospectively evaluate the program for its own convenience and efficiency.

Additionally, the dormant Commerce Clause argument failed because graduates from both in-state or out-of-state nursing programs are similarly assured of licensure in California as long as their coursework meets the minimum California standards.

Here, Excelsior was not entitled to a writ of mandate because the Board properly exercised its statutory discretion in refusing to recognize the nursing program.

HOLDING: The trial court's judgment is affirmed.

IMPACT: The Board of Registered Nursing effectively exercised its statutory discretion in refusing to accept the college's program coursework as meeting California's minimum requirements pursuant to Bus. & Prof. Code section 2736.

Krontz v. City of San Diego, 39 Cal. Rptr. 3d 535 (Ct. App. 2006).

LAW: The suspension of the business permit was not an unconstitutional prior restraint because the permit holder violated valid regulations. Also, the government had an interest in enforcing regulations which did not actually infringe on the permit holder's freedom of speech.

FACTS: Donald Krontz held a permit to operate a nude entertainment establishment. The police observed numerous violations of the "no touch" and "six foot" rules under Mun. Code section 33.3609 and notified Krontz of the violations. His permit was suspended for ten days and Krontz was informed of his right to an administrative hearing.

Krontz filed a petition for writ of administrative mandamus challenging the suspension of his permit. The superior court denied the petition.

ANALYSIS: Krontz failed to dispute that he violated numerous regulations, and did not argue that the ordinance lacked necessary procedural safeguards. Thus, his claim focused on the basis of the punishment and not on a prior restraint.

The regulation involved was content-neutral as to the time, place and manner restrictions. The court found that the regulation was sufficiently narrow that it did not infringe expressive conduct, which in this case was nude dancing. Thus, the suspension of the permit did not violate Krontz's due process rights since he was given ample notice of the violation of the regulations.

HOLDING: The trial court's judgment is affirmed.

IMPACT: The permit holder's First Amendment rights were not violated because the government had a valid interest in obtaining compliance with regulations which were unrelated to the suppression of speech.

Lieblein v. Shewry, 40 Cal. Rptr. 3d 547 (Ct. App. 2006).

LAW: The Department of Health Services may revoke an application for continued enrollment as a Medi-Cal pharmacy provider for failure to disclose professional discipline.

FACTS: Lieblein submitted an application to the California Department of Health Services for continued enrollment as a Medi-Cal pharmacy provider. In his application, Lieblein neglected to state that the State Board of Pharmacy had recently revoked Lieblein's license. The Department of Health Services discovered this omission and denied the application pursuant to Welf. & Inst. Code section

14043.2. The Department also barred him from reapplying to the program for three years.

Lieblein appealed to the Department's Office of Administrative Hearings and Appeals arguing that the omission was inadvertent because his employee filled out the application for him. The appeal was denied. He then filed a petition for writ of mandate, and the trial court denied the petition.

ANALYSIS: Under the Welf. & Inst. Code section 14043.26, the department is not required to establish that a provider's omission in an application was intentional, willful, or fraudulent before imposing sanctions on the provider. The sanctions directly stem from violations per se of the disclosure provision and apply to both new and existing applicants.

Furthermore, due process does not require a hearing with live testimony because the written application is sufficient evidence in an administrative appeal. Here, the notice of the administrative decision was found to be adequate and timely.

HOLDING: The trial court's judgment is affirmed.

IMPACT: Sanctions may be imposed by the Department of Health Services upon a pharmacy provider for failure to disclose professional discipline without establishing evidence that the omission was due to intentional, willful, or fraudulent misconduct.

Coffin v. Alcoholic Beverage Control, 43 Cal. Rptr. 3d 420 (Ct. App. 2006).

LAW: Under Government Code section 11504, the burden of proof was on the applicant to establish its eligibility for a liquor license from the start of the application process until the Department of Alcoholic Beverage Control ("Department") made a final determination.

FACTS: The Barona Tribal Gaming Authority ("Barona") applied for a general liquor license and was granted an interim license. There had been numerous protests against the issuance of the license to Barona. The Sheriff's Department sent the protestors a notice of the protest hearing stating that the grant of a liquor license would be

contrary to the public welfare and morals. During the protest hearing, the Department's Administrative Law Judge ("ALJ") placed the burden of proof on the protestors.

The ALJ then granted the liquor license conditioned on Barona's submission of a signed petition which incorporated various conditions to satisfy the protestors' concerns. The Department of Alcoholic Beverage Control adopted the ALJ's decision as its own. The protestors appealed to the Board, which affirmed.

ANALYSIS: A liquor license applicant bears the burden of proof under Gov. Code section 11504. The applicant must prove its eligibility for a license from the beginning of the application process up until the department makes a final determination. Contrary to the tribal gaming authority's argument, the grant of a conditional license does not shift the burden of proof to the protestors once the tribal gaming authority has established a prima facie case providing that it had good cause to obtain the license.

Accordingly, the department erred in shifting the burden of proof on the protestors instead of resting it on the tribal gaming authority throughout the application review process.

HOLDING: The Board's decision is annulled and remanded to the department for further proceedings.

IMPACT: The burden of proof to provide proof of eligibility for a liquor license does not shift from the applicant to the protestor. Rather, the burden rests on the applicant throughout the application process.

Brierton v. Dep't of Motor Vehicles, 44 Cal. Rptr. 3d 480 (Ct. App. 2006).

LAW: Administrative sanctions, which protect the public from future conduct, are independent and do not infringe on criminal sanctions, which punish past misconduct. Hence, the strict administrative suspension did not violate the separation of powers doctrine.

FACTS: Brierton was criminally prosecuted for drunk driving offenses. Pursuant to a plea negotiation, the trial court imposed two

different suspensions, the first for a one year term and the second for a term of 90 days. Subsequently, the Department of Motor Vehicles ("DMV") suspended Brierton's drivers license for two years under Vehicle Code section 13352(a)(3) due to the two alcohol related driving offense convictions. Brierton argued that these sanctions violated the separation of powers doctrine because they imposed a different term of suspension than from those that the trial court imposed in his criminal case. He claimed that in doing so, the Legislature usurped the sentencing discretion of the trial court.

The trial court denied the Brierton's petition for a writ of mandate to prevent enforcement.

ANALYSIS: The more stringent administrative suspension does not violate the separation of powers doctrine under the California Constitution article III section 3. This doctrine is violated only when the action of one branch of government materially infringes or impairs the inherent function of another branch. Furthermore, administrative sanctions serve to protect the public from future harm, while criminal sanctions serve to punish past misconduct. Thus, these two sanctions are wholly independent of each other.

Additionally, although Brierton bargained for favorable treatment in trial court during his drunk driving case, this does not affect the administrative sanction under section 13352. Here, Brierton was aware of the potential administrative sanction when he entered his plea.

HOLDING: The trial court's judgment is affirmed.

IMPACT: There is no violation of the separation of powers doctrine when strict administrative sanctions are imposed in addition to criminal sanctions.

COLORADO STATE COURT

Harwood v. Senate Majority Fund, L.L.C., 141 P.3d 962 (Colo. Ct. App. 2006).

LAW: Opinion polls which pose neutral questions are not meant to influence voters to vote a certain way, but rather they are intended to

measure public opinion and collect data. These types of polls are not considered electioneering communication.

FACTS: Senate Majority Fund, L.L.C. ("SMF") hired a polling firm to conduct a telephone opinion poll to gauge public opinion before the 2004 election. The polling firm conveyed the poll results and provided information regarding the chance of a candidate's success, key issues and developing trends. SMF used this information to formulate a political strategy and decide how to allocate funds for radio advertisements and direct mailings.

SMF reported its contributions and expenditures to the Colorado Secretary of State pursuant to the Campaign and Political Finance Amendment XXVIII ("Amendment"). However, they did not include the payment to the polling firm for the previous opinion poll.

Harwood claimed that SMF's failure to disclose this information constituted an electioneering communication. After the hearing, the administrative law judge held that the opinion poll was not an electioneering communication because it was made in the regular course and scope of business. Thus, the opinion poll was an exception to the Amendment. The ALJ refused to impose civil penalty on SMF.

ANALYSIS: Under the Amendment, electioneering communication is defined as:

> any communication broadcasted by television or radio, printed in a newspaper...that (1) unambiguously refers to any candidate; and (2) is broadcasted, printed, mailed, delivered, or distributed within thirty days before a primary election or sixty days before a general elections; and (3) is broadcasted to, printed in a newspaper distributed to, mailed to, delivered by hand to, or otherwise distributed to an audience that includes members of the electorate for such public office.

Here, polling firms transmitted, interchanged, expressed, and exchanged facts, information, thoughts, or opinions to companies who hired them. The Amendment was primarily adopted because the electorate was concerned with regulating, not opinion polls, but

rather the speech that was intended to influence the outcome of the elections. The opinion polls were not designed to influence voters or sway public opinion. Instead the polls proposed neutral questions to collect data and measure public opinion. Accordingly, the court held that the poll was not electioneering communication.

HOLDING: The Division of Administrative Hearings order is affirmed.

IMPACT: The Colorado electorate intended the Amendment to regulate communication that influenced the outcome of elections. Since there was no electoral advocacy involved during the opinion polls, the polls thus fall outside the scope of electioneering communication.

ILLINOIS STATE COURT

Jones v. Cahokia Unit Sch. Dist. No. 187, 845 N.E.2d 866 (Ill. App. Ct. 2006).

LAW: An administrative appeal may properly be dismissed for failure to timely serve and name the proper defendants.

FACTS: A tenured teacher failed to name the Illinois State Board of Education and its hearing officer as proper defendants. He also failed to serve the defendants within the 35 day limit pursuant to the Administrative Review Law ("Law"). The circuit court dismissed the administrative review action. The teacher then appealed the dismissal of his action.

ANALYSIS: The circuit court's decision is reviewed de novo because this case only presents a question of law. The Illinois School Code states that when a local school district terminates a tenured teacher for cause, it must first serve the teacher with written notice of the charges which led to the termination. Also, if the teacher requests a hearing, one must be afforded.

The Illinois State Board of Education decides all claims arising under the School Code. When a discharged teacher requests a hearing, the district must notify the State Board, who then provides a list of impartial hearing officers. Once an officer is chosen, this

officer holds the hearing and renders the final decision. This decision is final unless review is sought under the Administrative Review Law.

The Law requires that once a complaint is filed, the plaintiff must serve and name the defendants. Here the teacher failed to name the State Board and its hearing officer as defendants in his original complaint. Since the teacher failed to comply with the provision of the Law, his claims for administrative review were dismissed.

HOLDING: The trial court's judgment is affirmed.

IMPACT: An administrative review action may be dismissed if an appellant fails to timely serve and name the defendants who would be affected by the decision.

MARYLAND STATE COURT

Fowler v. Motor Vehicle Admin., 906 A.2d 347 (Md. 2006).

LAW: In order for the appellate court to perform its reviewing function, an administrative law judge's decision must contain full, complete and detailed findings of fact and conclusions of law.

FACTS: The driver was stopped by an officer and was asked to perform a field sobriety test. The driver performed poorly on the test and subsequently refused to submit to a preliminary breath test. The officer arrested him for drunk driving based on his performance on the sobriety tests. At the police station, the officer provided the driver with a DR-15 Advice of Rights form which advised the driver of the consequences for refusing or failing a chemical breath test and to certify that the officer complied with the statute's advice of rights requirements. Both the officer and the driver signed this form.

The driver's license was then suspended and he requested a hearing to contest the suspension. He also filed a motion to subpoena the arresting officer to support his claim that he was not advised fully of the sanctions for refusing to take the chemical breath test. At the hearing, the Administrative Law Judge ("ALJ") denied the driver's subpoena request.

ANALYSIS: The Court found that the ALJ was faced with conflicting evidence regarding the officer's written certification in the DR-15 Advice of Rights form and the testimony from the arrested driver. Additionally the administrative record lacked specific or explicit statements indicating whether the ALJ accepted or rejected the driver's testimony. Thus, the appellate court was unable to perform its function.

Furthermore, the denial of the subpoena request was inappropriate because there were factual disputes surrounding whether the driver was accurately advised of the consequences of refusing the breath test or whether he was misled by the officer's statements. Therefore, the basis for the rejection of the subpoena request was not apparent.

HOLDING: The circuit court judgment is denied and remanded.

IMPACT: When there is insufficient evidence indicating whether the ALJ accepted or rejected testimony or other evidence, the appeals court is unable to properly perform its reviewing function.